

**REMARKS**

In the Office Action<sup>1</sup>, the Examiner:

1. rejected claim 52 under 35 U.S.C. § 101;
2. rejected claims 1-5, 7, 10-14, 17-22, 24, 27-31, 34-37, 39, 42-46, and 49-52 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,124,197 to Ocepek et al. ("*Ocepek*");
3. rejected claims 6, 23, and 38 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of U.S. Patent No. 6,009,423 to Moran ("*Moran*");
4. rejected claims 8, 25, and 40 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of U.S. Patent No. 7,174,373 to Lausier ("*Lausier*");
5. rejected claims 9, 26, and 41 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, in view of *Lausier*, and further in view of U.S. Patent Application Publication No. 2003/0101353 to Tarquini et al. ("*Tarquini*"); and
6. rejected claims 15, 16, 32, 33, 47, and 48 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of U.S. Patent No. 6,580,712 to Jennings et al. ("*Jennings*").

Applicant has amended claim 52. Claims 1-52 remain pending and under current examination.

**I. Regarding the rejection of claim 52 under 35 U.S.C. §101**

The Examiner rejected claim 52 under 35 U.S.C. §101 and asserts, "[a] computer program product having a program code does not produce a useful result. Program

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<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

code that is not executed by a processor or a computer fails to carry out the functions of the claimed subject matter therefore it does not produce a tangible, useful or concrete result” (Office Action at page 3).

Applicant has amended claim 52 to recite a “computer program product, tangibly embodied in a computer-readable storage medium, for detecting a wireless access device on a network and containing instructions which, when executed on a processor, perform a method.”

Applicant submits that a “computer program product, tangibly embodied in a computer-readable storage medium” that contains instructions that are executed by a processor produces a useful result and falls within the categories of patentable subject matter. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 52 under 35 U.S.C. §101.

**II. Regarding the rejection of claims 1-5, 7, 10-14, 17-22, 24, 27-31, 34-37, 39, 42-46, and 49-52 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek***

Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1-5, 7, 10-14, 17-22, 24, 27-31, 34-37, 39, 42-46, and 49-52 under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established with respect to these claims.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. See M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See *id.* “A conclusion of obviousness requires that the reference(s) relied upon be enabling in that

it put the public in possession of the claimed invention.” M.P.E.P. § 2145. Furthermore, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” at the time the invention was made. M.P.E.P. § 2143.01(III), internal citation omitted. Moreover, “[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” M.P.E.P. § 2141.02(I), internal citations omitted (emphasis in original).

“[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III).

In this application, a *prima facie* case of obviousness has not been established because the Office Action has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the claimed invention and the cited references. Accordingly, the Office Action does not clearly articulate a reason why the cited references would have rendered the claimed invention obvious to one of ordinary skill in the art.

For example, claim 1 recites a method comprising, *inter alia*:

receiving from the network a packet with an address; and  
indicating that the received packet corresponds to the wireless  
access device based on the address and on an operating system  
associated with the received packet.

(emphasis added). *Ocepek* does not teach or suggest each and every element of Applicant's claimed invention.

*Ocepek* discloses access authorization depending on whether a client device is known or unknown (col. 3, lines 36-51). In *Ocepek*, security device 10 "passively monitors the data link layer for new client devices 24" (col. 5, lines 14-15). According to Fig. 6 of *Ocepek*, a "correction ARP reply is generated for each protected server 16 and broadcast to all devices" (col. 7, lines 40-41). "The source MAC address is dependent upon the operating system and hardware of protected servers 16" (col. 7, lines 43-44).

Even assuming that the source MAC address of *Ocepek* could correspond to the claimed "address," which Applicant does not concede, *Ocepek* teaches that the source MAC address "is dependent upon the operating system and hardware of protected servers 16" (emphasis added). Any address that may exist in Fig. 6 of *Ocepek* corresponds to the source MAC address that depends on servers 16. Accordingly, any packet indication that may exist in *Ocepek* indicates that the packet is dependent on servers 16, not client devices 24, which allegedly correspond to the claimed "wireless access device."

The Examiner correctly states that *Ocepek* "does not teach that the device is a wireless access device as cited in the original [office] action [but] rather teaches that the device is a server" (Office Action at page 3). However, the Examiner cites ref. 20 in

*Ocepek* and asserts that server 16 can be a “wireless access device” (Office Action at page 3). This is not correct.

Nothing in *Ocepek* teaches or suggests that server 16 could correspond to the claimed “wireless access device,” as asserted by the Examiner. On the contrary, ref. 20 in *Ocepek* is a wireless access point that is used to connect client devices 24, not server 16, to network 12. Even assuming that *Ocepek* teaches that client devices 24 may wirelessly connected to network 12, which Applicant does not concede, wireless access point 20 is not connected to server 16.

As depicted in Fig. 1 of *Ocepek*, server 16 does not interact with wireless access point 20. Wireless access point 20 is connected to client devices 24, not server 16. Therefore, the use of wireless access point 20 to connect client devices 24 to network 10 does not teach or suggest that server 16 corresponds to the claimed “wireless access device” at least because server 16 does not interact with wireless access point 20 and there is no teaching or suggestion in *Ocepek* that server 16 can connect to wireless access point 20. Therefore, *Ocepek* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device based on the address and on an operating system associated with the received packet,” as recited in claim 1.

Accordingly, *Ocepek* does not teach or suggest the elements of claim 1. Moreover, there is no teaching or suggestion that would lead one of ordinary skill in the art to modify the apparatus of *Ocepek* to achieve the combination of claim 1. Thus, as outlined above, the Office Action has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited

references and the claimed invention. Therefore, no reason has been clearly articulated as to why the claim would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established with respect to claim 1.

Thus, claim 1 is allowable for at least these reasons, and claim 17 is also allowable at least due to its dependence from claim 1.

Independent claims 2, 18, 19, 34, and 49-52, while of different scope, recite elements similar to those of claim 1 and are thus allowable over *Ocepek* for at least the same reasons discussed above in regard to claim 1. Moreover, claims 3-5, 10-14, 20-22, 24, 27-31, 35-37, 39, and 42-46 are also allowable at least due to their dependence from one of claims 2, 19, and 34.

**III. Regarding the rejection of claims 6, 23, and 38 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Moran***

Regarding the rejection of claims 6, 23, and 38, which depend from claims 2, 19, and 34, the Examiner relies on *Moran* for allegedly disclosing “comparing based on determination of whether a portion of the address is similar to a portion of at least one of the registered addresses” (Office Action at page 12). Even assuming this allegation is correct, which Applicant does not concede, *Moran* fails to cure the deficiencies of *Ocepek* discussed above.

*Moran* discloses providing “a search structure which can be efficiently searched and which when implemented in the context of a bridge . . . enables the efficient location of data associated with a given 6-byte address” (col. 2, lines 3-6). However, *Moran* does not teach or suggest the claimed “indicating that the received packet corresponds

to the wireless access device based on the address and on an operating system associated with the received packet,” as recited in claim 1 and similarly recited in claims 2, 19, and 34, and required by dependent claims 6, 23, and 38.

As explained above, the elements of claims 2, 19, and 34 are neither taught nor suggested by the cited references, whether taken individually or in combination. Furthermore, as outlined above, the Examiner has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has been clearly articulated as to why claims 2, 19, and 34 would have been obvious to one of ordinary skill in view of the references and a *prima facie* case of obviousness has not been established. Dependent claims 6, 23, and 38 are also allowable over *Ocepek* and *Moran*, for at least the same reasons as their respective base claims 2, 19, and 34.

**IV. Regarding the rejection of claims 8, 25, and 40 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Lausier***

Regarding the rejection of claims 8, 25, and 40, which depend from claims 2, 19, and 34, the Examiner relies on *Lausier* for allegedly disclosing “determining the operating system at the IP address associated with the address” (Office Action at page 13). Even assuming this allegation is true, which Applicant does not concede, *Lausier* does not cure the deficiencies of *Ocepek* noted above.

*Lausier* discloses a “system of internet broadcasting in which multimedia content is delivered to internet users bypassing most internet backbone” (col. 3, lines 53-55). However, *Lausier* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device based on the address and on an

operating system associated with the received packet,” as recited in claim 1 and similarly recited in claims 2, 19, and 34, and required by dependent claims 8, 25, and 40.

As explained above, the elements of claims 2, 19, and 34 are neither taught nor suggested by the cited references, whether taken individually or in combination. Furthermore, as outlined above, the Examiner has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has been clearly articulated as to why claims 2, 19, and 34 would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established. Dependent claims 8, 25, and 40 are also allowable over *Ocepek* and *Lausier*, for at least the same reasons as their respective base claims 2, 19, and 34.

**V. Regarding the rejection of claims 9, 26, and 41 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, *Lausier*, and further in view of *Tarquini***

Regarding the rejection of claims 9, 26, and 41, which depend from claims 2, 19, and 34, the Examiner relies on *Tarquini* for allegedly disclosing “determining the operating system using an nmap” (Office Action at page 14). Even assuming this allegation is true, which Applicant does not concede, *Tarquini* does not cure the deficiencies of *Ocepek* and *Lausier* noted above.

*Tarquini* discloses “a method of detecting an intrusion at a node of a network” (paragraph 0014). However, *Tarquini* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device based on the



address and on an operating system associated with the received packet,” as recited in claim 1 and similarly recited in claims 2, 19, and 34, and required by dependent claims 9, 26, and 41.

As explained above, the elements of claims 2, 19, and 34 are neither taught nor suggested by the cited references, whether taken individually or in combination. Furthermore, as outlined above, the Examiner has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has been clearly articulated as to why claims 2, 19, and 34 would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established. Dependent claims 9, 26, and 41 are also allowable over *Ocepek*, *Lausier*, and *Tarquini*, for at least the same reasons as their respective base claims 2, 19, and 34.

**VI. Regarding the rejection of claims 15, 16, 32, 33, 47, and 48 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Jennings***

Regarding the rejection of claims 15, 16, 32, 33, 47, and 48, which depend from claims 2, 19, and 34, the Examiner relies on *Jennings* for allegedly disclosing “storing the plurality of the organizationally unique identifiers, such that a more frequently encountered organizationally unique identifier is searched before a less frequently encountered organizationally unique identifier” (Office Action at page 14). Even assuming this allegation is true, which Applicant does not concede, *Jennings* does not cure the deficiencies of *Ocepek* noted above.

*Jennings* discloses “the use of a specific or dedicated engine to execute the algorithm” (col. 2, lines 50-51). However, *Jennings* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device based on the address and on an operating system associated with the received packet,” as recited in claim 1 and similarly recited in claims 2, 19, and 34, and required by dependent claims 15, 16, 32, 33, 47, and 48.

As explained above, the elements of claims 2, 19, and 34 are neither taught nor suggested by the cited references, whether taken individually or in combination. Furthermore, as outlined above, the Examiner has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has been clearly articulated as to why claims 2, 19, and 34 would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established. Dependent claims 15, 16, 32, 33, 47, and 48 are also allowable over *Ocepek* and *Jennings*, for at least the same reasons as their respective base claims 2, 19, and 34.

## **VII. Conclusion**

In view of the foregoing, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge  
any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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